

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORKUSDC SDNY
DOCUMENT
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DAMOND BAILEY,

Plaintiff,

-against-

THE CITY OF NEW YORK, NEW YORK CITY
POLICE DEPARTMENT, NEW YORK CITY POLICE
OFFICERS JOHN DOES NUMBERS 1-6, and NEW
YORK CITY POLICE OFFICERS JANE DOES 1-6,
individually and in their official capacities,

Defendants.

1:19-cv-01488-MKV

ORDER

MARY KAY VYSKOCIL, United States District Judge:

On August 21, 2020, the Court entered an Order granting counsel for Plaintiff's Motion for Leave To Withdraw as Counsel [ECF No. 36; *see* ECF Nos. 32–34]. In that Order, the Court directed Plaintiff to "file a letter with the Court on or before **September 16, 2020**, explaining whether Plaintiff has retained substitute counsel or whether Plaintiff will be proceeding *pro se*." That Order warned that "**[f]ailure to comply with this order and the deadline stated herein may result in sanctions, including the preclusion or dismissal of claims.**" The Court mailed a copy of that Order to Plaintiff at the address of record. A docket entry dated September 8, 2020, reflects that that Order was returned to the Court for the following reason: "Return To Sender Insufficient Address Unable To Forward."

On November 18, 2020, Defendants filed a letter requesting that the case be dismissed for failure to prosecute [ECF No. 37]. On November 19, 2020, the Court entered an Order denying that request without prejudice to filing and service (upon Plaintiff at the address of record) of formal motion papers that comply with Local Rules 7.1 and 7.2 [ECF No. 38]. The Court mailed a copy of that Order to Plaintiff at the address of record. A docket entry dated December 1, 2020,

reflects that that Order was returned to the Court for the following reason: "Return To Sender Insufficient Address Unable To Forward."

On December 4, 2020, Defendants filed a letter attached to which were several e-mails from Tiasha Jenkins, who purports to be Plaintiff's mother [ECF Nos. 39, 39-1]. Defendants advised the Court that they have prepared and briefed a motion to dismiss for failure to prosecute that complies with the relevant procedural rules. Defendants state that they intended to serve Plaintiff with the motion on December 8, 2020, but given the e-mail correspondence from Ms. Jenkins, who Defendants acknowledge is not a party to the action, Defendants requested guidance from the Court as to whether to proceed with the filing and service of their motion.

Accordingly, IT IS HEREBY ORDERED that Defendants shall file and serve their anticipated motion to dismiss for failure to prosecute on or before December 8, 2020, as they had intended.

IT IS FURTHER ORDERED that on or before January 6, 2021, Plaintiff shall file (1) a letter advising the Court whether he has retained substitute counsel or intends to proceed *pro se*; and (2) any opposition to Defendants' motion.

PLAINTIFF'S FAILURE TO COMPLY WITH THIS ORDER AND THE DEADLINE HEREIN MAY RESULT IN SANCTIONS, INCLUDING THE PRECLUSION OR DISMISSAL OF CLAIMS.

The Clerk of Court is respectfully requested to mail a copy of this Order to the *pro se* Plaintiff at the address of record.

SO ORDERED.

Date: December 4, 2020
New York, NY


MARY KAY VYSKOCIL
United States District Judge